

April 15, 2012

To:

Melanie Haveman
Wetlands Division
USEPA Region 5
77 West Jackson Blvd
MC: WW-16J
Chicago, IL 60604-3507
Haveman.melanie@epa.gov

Chris Mensing
Wildlife Biologist
US Fish and Wildlife Service
East Lansing Field Office
2651 Coolidge Rd
East Lansing, MI 48823
chris_mensing@fws.gov

Jean Battle
USACE, Marquette Field Office
115 South Lakeshore Boulevard Suite C
Marquette, MI 49855
Jean.M.Battle2@usace.army.mil

Copy to:

Ms. Susan Hedman
Regional Director
USEPA Region 5
77 West Jackson Boulevard
MC: R-19J
Chicago, IL 60604-3507
hedman.susan@epa.gov

Tom Melius
Regional Director
US Fish and Wildlife Service
BHW Federal Building
1 Federal Drive
Ft. Snelling, MN 55111
tom_melius@fws.gov

John Konik
USACE – Detroit District
477 Michigan Ave
Detroit, MI 48226
john.konik@usace.army.mil

and (via their websites, minus attachments):

Senator Carl Levin
U.S. Senate
269 Russell Office Building
Washington, DC 20510-2202

Senator Debbie Stabenow
133 Hart Senate Office Building
Washington, DC 20510

Public Comment to US EPA, US Army Corps of Engineers, and US Fish & Wildlife Service, on Proposal for CR 595, a new county road in Marquette County, Michigan. Michigan DEQ Public Hearing 11-52-0075-P.

I am writing to express my OPPOSITION to the proposal by Marquette County to build a new road, "County Road 595" through the highlands of north central Marquette County. The proposed road would run from County Road AAA near Kennecott's Eagle Mine, south to US Hwy 41 near Kennecott's Humboldt mill. Like the private Woodland Road proposal, this project was initiated by Kennecott Eagle Mining Company (KMC), which would partly finance the road. I submitted similar comments to the Michigan DEQ on the afternoon of March 2, 2012 during the most recent public comment period on this road.

My reasons for opposing this road include the following.

KENNECOTT ROAD PLANS INVOLVE YEARS OF DECEPTION AND MANIPULATION

Anyone who has watched the campaign to put a mine on the Yellow Dog Plains unfold knows that Kennecott has willfully and repeatedly manipulated and outright lied to the public. The CR 595 proposal is just another step in the process.

When Kennecott first proposed the "Eagle Mine" in the early 2000s, the company stated that no additional infrastructure would be needed for the mine, because they would use existing roads and run the mine using diesel generators. Since then they have paid the local power co-op to run lines out to the mine in violation of Part 632 of Act 451 of 1994. They are now attempting for a third time to push an entirely new haul road from the mine to the mill, through one of the largest blocks of undeveloped land in the midwest.

Page 21 of Section 4.3.7 ("Ore Transportation") of Kennecott Eagle Mineral Company's February 2006 mining permit application states:

"Presently KEMC plans to use the following approved trucking route to the railhead:

- ♦ *East on Triple A Road, 9 miles to CR 510,*
- ♦ *East on CR 510, approximately 3 miles to CR 550,*
- ♦ *South on CR 550 approximately 20 miles to a railhead in the vicinity of Marquette.*

KEMC is continuing to study transportation routes and railhead locations, and the final transportation plan may change from that described above."

After receiving their mining permit they subsequently ditched the railhead idea and basically threatened to run their ore haul trucks through Marquette and down 41 to Humboldt. It is now widely understood that this "threat" was intended to grease the skids for a new road through the Michigamme Highlands, from their Eagle Mine to their mill in Humboldt. This latest attempt by Kennecott to manipulate the permitting system and the public should not be tolerated.

I strongly agree with recent comments by the US Army Corps (Letter from John Konik, US

ACE to Peter Swenson, US EPA, dated March 29, 2012) that Kennecott should seriously consider existing rail corridors for hauling ore from the mine to the mill. Rebuilding and using a rail line would benefit the public and even the company in a number of ways. Large, heavy loads of ore could be hauled safely and efficiently, avoiding heavy impacts to public roads. It would also avoid the traffic and safety problems associated with hauling ore on public roads. Two railroad tracks can carry as many people in an hour as a 16-lane wide highway (Lowe 1994). Railroad corridors take less space, so impacts to the land will be minimized as much as possible. Jobs would be created rebuilding the rail line and operating the railroad.

The MCRC claims to be concerned about greenhouse gas emissions. Rail lines are much more energy-efficient for hauling large amounts of materials than are roads and trucks. Using a rail instead of ore trucks would result in greatly reduced diesel fuel use and CO₂ emissions per unit of ore shipped.

APPLICATION AGAIN SEEKS TO MINIMIZE THE PRIMARY PURPOSE OF THE ROAD

Page 10 of the "Revised Alternatives Analysis & Project Assessment" states:

"The purpose of the proposed CR 595 project is to construct a primary county northsouth road that (1) connects and improves emergency, commercial and recreational access to a somewhat isolated but key industrial, commercial and recreational area in northwest Marquette County to US-41, and (2) reduces truck travel from this area through the County's population centers."

By now it is obvious to even many supporters of the mine that whether it is called the "Woodland Road" or CR 595, this road is being built as a haul road, so that Kennecott can haul ore from the Eagle Mine on AAA Road, south to Hwy 41 and the Humboldt mill. That's why one end of the road joins AAA near the mine, and the other end joins Hwy 41 near the mill. That's why Kennecott offered to pay upwards of \$50 million for construction of the Woodland Road, and is promising to pay for the construction and upkeep (for 7 years at most, apparently) of the very similar CR 595. A major objection to the Woodland Road by the EPA and other agencies was that the application did not give true purpose of the road, which was as a mining haul road. The application for CR 595 continues to deny that this is the primary reason for the road.

As the US Army Corps stated in their analysis of the Woodland Road application, "If the road is required to connect the proposed nickel mine at Eagle Rock with the milling operation and tailings disposal facility at Humboldt, these actions should be evaluated under one project." The latest comments by the US ACE point out many of the same deficiencies in this latest proposal. Part 632 (Michigan's mining law) states that mining haul roads need to be considered and permitted under Part 632.

ALTERNATIVE ROUTES AGAIN NOT SERIOUSLY CONSIDERED

Under "4.03.C. Summary of MCRC Position on Other Routes" Page 47 of "Assessment" states:

"In regard to the Eagle Development Project, the only alternatives for mine access and a haul

route for ore to be transported to Humboldt Mill are CR 550 through Marquette and CR 510 to US-41 in Negaunee Township. Use of either of both of these routes by KEMC would require many more truck trips, as these routes are not entirely all-season roads and lighter loads would be required during the spring breakup period, which usually lasts about two months."

Having traveled the entire proposed route of the "Woodland Road" (which is nearly identical to this new route) in 2010, I can guarantee you that this proposed route is nowhere near standards for an all-season road. (For one very wet mile-long stretch south of Mulligan Creek, it was even totally impassible with ATVs.) Obviously whatever route is chosen, it can and will be upgraded to all-season standards. This paragraph is a good illustration of the inherent bias that the proponents have for the proposed CR 595 route, and against any alternative.

ALTERNATIVE REASONS FOR A ROAD NOT VALID

The application makes a number of unsubstantiated claims in its efforts to justify a new road. One new claim is the frequent and sometimes almost hysterical assertion that a new road is needed west of Silver Lake Basin in the event of the failure of the dam on the Dead River. This concern does not appear anywhere in the 2009 application for the Woodland Road as far as I can tell, but is considered a major reason for building CR 595. For example, p. 23 of the "Revised Alternatives Analysis & Project Assessment" states:

"Flood emergencies are frightful, as the true power of nature is exhibited in a flood. To have people cut off from emergency services and the ability to obtain food, fuel, and other necessities is extremely problematic to the community. CR 595 would provide an access to northwest Marquette County that is upstream of the series dams on the Dead River in the event of a flood emergency. Copies of some newspaper articles from 2003 that described the flood emergency and associated damages are included in Appendix K."

The CR 595 proposal is riddled with claims that this road is needed in case the Silver Lake dam breaks again. This seems highly unlikely, though, as this dam was rebuilt to much higher standards after the 2003 dam breach. Also UPPCO is undoubtedly much more attentive to the condition of the dam than they were before the break. If the proponents of this road really have serious concerns that the dam is about to fail again, they should contact UPPCO and have them repair or rebuild the dam, or have the dam removed and return the river to its free-flowing state. The Federal Energy Regulatory Commission (FERC) should also be notified of the dam's unstable condition. Any of these actions would be much more effective in preventing a dam failure than building a new road would.

Since the 2003 dam break, a new high elevation bridge has been built on CR 510 across the Dead River. This bridge allows ample room for the river, so that even if the dam did break again (an extremely unlikely event at this point) the river would not damage the bridge and the road corridor would remain intact. The "Application" completely ignores this fact.

The "Application" gives a number of other disingenuous reasons for needing for this road, including a purported concern about greenhouse gas emissions. Yet the substantial CO₂ emissions that would result from building a new road versus upgrading existing corridors are not considered. Nor is the loss of wetland and forest vegetation along the new route, which would reduce the land's capacity to remove CO₂ from the air.

They also claim that CR 595 will increase safety along the route. But this will in great part become a self-fulfilling prophecy. The old saying, "build it and they will come" is definitely true of roads. The road will lead to traffic, and sooner or later there will be accidents. The "Assessment" even admits this on page 20:

"Construction of a new highway in northwest Marquette County may increase the incidence of fires and other situations requiring emergency services, putting a strain on already stretched resources."

And on page 36 it states:

"Implementation of the CR 510-Red Road-Sleepy Hollow route or the CR 595 route may result in an increased probability of collisions associated with rural and recreational areas including deer, and to a lesser extent ORVs and snowmobiles."

The application also admits that easier access to northwest Marquette County for recreation and other purposes *"may result in more forest fires, more search and rescue calls, and more EMS calls to this region of the county."* And nothing in this application addresses a concern I've commented on repeatedly during this process: How can berry pickers and other recreationalists possibly co-exist on a 2-lane road, with massive ore trucks running the road 24 hours a day, 7 days a week? A cynical but knowledgeable friend who has been involved with this issue from the beginning once remarked to me (for the original Woodland Road) that he thought that sooner or later the Michigan DOT would be forced to bar the public from using the road for their own safety, giving Kennecott the private haul road through the Michigamme Highlands that they have wanted since the beginning.

RARE PLANT SURVEYS STILL INADEQUATE

The section of the current CR 595 application pertaining to the ecological surveys for this road is entitled, "2008 ECOLOGICAL SURVEYS: Proposed Woodland Road Route" (download file wrd-cr595-aapa-aap-m1_374735_7.pdf). This section is simply reproduced from the application for the original Woodland Road. Because this section is identical to the one submitted for the 2009 Woodland Road application, my February 20, 2010 written comments to the 2009 application are relevant to the current application as well. I have included these comments below, followed by additional information. I have also included the supporting documents mentioned below with these comments.

Rare plant surveys inadequate (from 2009)

After reading King & MacGregor's "2008 Ecological Surveys: Proposed Woodland Route" (file lwm-woodland-15b1_304029_7.pdf) it is clear to me that surveys for rare and endangered plants by KMC consultants were not adequate. The consultants do not seem to be familiar with the flora of Upper Michigan. Without further comment they report finding plants such as *Prenanthes altissima* and *Viola rostrata*, both eastern and southern species which are unknown from central and western Upper Michigan and unlikely to occur there. They also include basket willow (*Salix purpurea*), a European species that is so far barely established in the UP and is highly unlikely to be found in this remote area. At the same time similar and very common native willows such as pussy willow (*Salix discolor*) and diamond willow (*Salix eriocephala*) are omitted from their list.

On pages 14 and 18 of "2008 Ecological Surveys" the consultants state that the only rare plant species found during their surveys was linear-leaved gentian. Yet in Table 7-1, "Overall Plant List for Proposed Woodland Road Route", on page 6 (of 11) of the file lwm-woodland-15b4_304032_7.pdf, they report finding Virginia water-horehound (*Lycopus virginicus*) along the proposed road corridor. Virginia water-horehound is (at least up until now) only known to occur in Michigan in the southern Lower Peninsula, and is listed as "threatened" by the Michigan DNRE. If the consultants really did find Virginia water-horehound along the corridor (unlikely but not impossible - it also occurs in southern and central Wisconsin) this plant is also protected under Part 365 of Michigan's Natural Resources and Environmental Protection Act, PA 451 of 1994.

In a recent phone conversation I was told by a highly-regarded botanist familiar with the Michigan Highways, that several additional state-listed plants occur on the ridges on the north end of the proposed route. These include the state-threatened big-leaved sandwort (*Arenaria macrophylla*) and several very rare *Botrychium* spp. (He did not give exact locations for these.)

Last August local resident Chauncey Moran and I spent 2 full days traveling the existing dirt road from the AAA to US 41 near Humboldt. Even though we didn't have time to survey many promising areas for rare plants, we nonetheless found two populations of Farwell's water milfoil (*Myriophyllum farwellii* Morong), a Michigan "threatened" species. To document these populations we took photos and made herbarium collections at each site, sending these specimens to the University of Michigan Herbarium. I also submitted detailed rare plant reporting forms for each site along with exact locational information to the MNFI last fall, and a detailed end-of-year report to Chris Hoving of the Michigan DNRE. (PDFs of all these forms were also emailed to Mike Smolinski of the Michigan DNRE at his request, on February 11, 2010.)

Page 14 of 18 of the "2008 Ecological Surveys" lists rare plant species (including Farwell's milfoil) appearing in the MNFI database for Marquette County. Both Farwell's water milfoil sites fall within the 300-ft wide corridor that the consultants claim to have searched (page 54 of 132). Yet the consultants were apparently unable to find these relatively large and obvious populations of Farwell's water milfoil along the route.

(End 2009 comments.)

On February 20, 2010 I submitted comments on the proposed Woodland Road at a public hearing in Ishpeming. There I told the officials from the DEQ about the two Farwell's water milfoil populations (a state "threatened" species under Part 365 of Michigan's Natural Resources and Environmental Protection Act, PA 451 of 1994). After the hearing, Mike Smolinski of the now-defunct Michigan Department of Natural Resources and Environment (MDNRE) gave me his card with his email address, and asked me to send him the information on the sites. The next morning before work, I scanned the completed Rare Plant Reporting Forms that I had submitted to the MNFI months before, and emailed them to him. The email was not returned by the server, indicating that it had reached its destination. I never got a reply from Smolinski or the MDNRE. Then about one year later Chauncey Moran of Big Bay told me that he had asked Smolinski about the milfoil sites and Smolinski told him he never got the reports. So I promptly emailed them again, asking him to let me know that he got them. Again I got no response.

Section 5.17 of the current CR 595 application "Affected Environment: Vegetative Communities" describes the botanical surveys KMC consultants did in 2005 (before this road was supposedly being considered), 2007 and 2008 within the old Woodland Road corridor (not the CR 595 corridor as stated). Their results are included in the 2009 report mentioned above, which is part of the current application.

The current "Revised Alternatives Analysis & Project Assessment" states:

"Farwell's water-milfoil was not identified during KME surveys conducted in 2008." (p. 111). And on p. 144 the "Assessment" states, "Farwell's water milfoil is described in the MNFI database as being previously identified in the same sections as the proposed CR 595 along Mulligan Creek and Wildcat Canyon Creek. However, it was not identified during KME surveys. If present along Mulligan Creek, this aquatic plant is not anticipated to be directly impacted by road construction because a clear span bridge is proposed for the Mulligan Creek crossing."

The Rare Plant forms that I submitted to the MNFI in 2010 for these two milfoil occurrences contain detailed information on the population size, location (including GPS lat/long coordinates), and habitat. Yet the application still does not acknowledge the fact that these two populations occur well within the proposed road corridor. The populations on Wildcat Canyon Creek and Mulligan Creek ARE found in shallow water (including pools surrounded by sedge and shrub swamp) next to the proposed road, and if mitigation measures are not taken they WILL be impacted by construction of the road. These rare plant populations are protected under Section 324.36501-324.36507 of Act 451 of 1994. They must be considered in the application, and mitigation measures outlined, for construction of this road to be legal.

Additionally, the consultant's report of the state-threatened plant Virginia water-horehound (*Lycopus virginicus*) along the proposed road corridor needs to be resolved. If the consultants really did find Virginia water-horehound along the corridor, this plant is also protected under Part 365 of Act 451 of 1994.

Some segments of the proposed CR 595 corridor deviate from the old proposed Woodland Road corridor. At a minimum these new segments also need to be surveyed for rare species and other environmental values before being approved.

It could easily be argued that the entire plant survey was inadequate. In 2010 I spent several days along the route of the old proposed Woodland Road, to see how thoroughly the KMC consultants had recorded plant species occurring along the route, as claimed in their "2008 Ecological Surveys" (also see section 5.17, "Affected Environment: Vegetative Communities" starting on page 107). I found 61 additional plant species that were not on their list. Some of these, including the non-native common redtop (*Agrostis gigantea*) and the native horseweed (*Conyza canadensis*) and ticklegrass (*Agrostis hyemalis*) were abundant, lining the road in some areas. (See attached Excel table.) At a minimum this indicates that the consultant's relatively brief and apparently hurried vegetation surveys were not comprehensive.

Finally, the oft-repeated claim that there are no old-growth forests in this area is false. This claim is repeated in the "Assessment", which states on page 4:

"It must be emphasized that this area has been logged systematically over the past 150 years and although there are mature stands of timber, they are not considered to be "old growth" forest."

Just to set the record straight, there are indeed substantial pockets of old-growth forest within the 4-mile wide study corridor and perhaps even in the proposed road corridor. I have seen them. Of the places I have walked (and that is only a small portion of this entire study corridor), there are stands of old-growth hardwoods and cedar along the North Country Trail east of the proposed road. Old-growth sugar maple, red oak and red and white pine grow along Wildcat Canyon east of the road. And several of the hills east of the proposed road support stands of old-growth hemlock, sugar maple, and white pine. Given the fact that the MCRC is promoting this road in part because it will increase timber harvest in the Highlands, these stands will not last long if a haul road is built.

INVASIVE SPECIES NOT ADEQUATELY ADDRESSED

Page 75 of the "Assessment" states:

"Introduction of invasive species by seeds or plant parts carried by vehicles to wetlands along the proposed CR 595 is possible. Post-construction monitoring to identify and eradicate any invasive species that may become established is a mitigation task that will be implemented as the situation warrants."

Introduction of invasive plant propagules as well as earthworms, introduced slugs, and other non-native invertebrates is not only "possible", it is a certainty. The "Application" gives no details of what actions will be taken to attempt to prevent invasives from moving in. What invasive species would be monitor for? Who would monitor for these species? How often would monitoring be done? What specific measures would be taken to prevent introductions and eradicate invasives that do become established? None of these issues are addressed in the application.

Numerous scientific studies have been published in recent years that document the highly destructive effects that several species of earthworms in particular have on northern hardwood and hardwood-conifer forests. (No terrestrial earthworm species are native to the Lake Superior Region, and all the earthworms found here have been introduced from Europe.) The use of construction equipment with mud caked to the fenders, etc. is sure to result in earthworms and other invasives being spread up and down the entire road corridor. And users of the road will spread propagules of invasive plants and invertebrates as well. The lack of specifics in this section leads me to believe that this section amounts to nothing but empty promises.

CONCLUSION

I have attended several public hearings held by the MDEQ and the MCRC on both the proposed Woodland Road and now CR 595. At the Woodland Road hearings a substantial number of citizens (including one commercial logger) spoke in favor of using existing roads for truck traffic instead of building a whole new road through the Michigamme Highlands. And at the most recent hearing on CR 595, a majority (including a number of self-described mining proponents) spoke against building a new road. A number of alternatives were suggested,

including building a bypass around the north side of Marquette. The 510 route (now a good 2-lane gravel road) would be substantially shorter than the 550 route, and would also seem to be a very workable option. In a response to the Woodland Road proposal the MDEQ and EPA stated that the *"Sleepy Hollow route appears to be the best of the alternatives included with this evaluation..."* And though it has the potential to address a number of problems and concerns about this road, the option of shipping the ore by rail has not been seriously considered.

There is no need for the county to build an entirely new road for Kennecott Mining Corporation. I ask that the US Environmental Protection Agency (and the Michigan DEQ) deny the application and associated permits for the construction of CR 595.

Thank you for considering my comments.

Steven C. Garske
PO Box 4
Marenisco, MI 49947-0004
906-842-3587 (late eves; weekends)
asimina@alphacomm.net

REFERENCE

Lowe, Marcia D. 1994. Back on Track: The Global Rail Revival. Worldwatch Paper #118. Worldwatch Institute, Washington, DC. (Introduction online at <http://www.worldwatch.org/bookstore/publication/worldwatch-paper-118-back-track-global-rail-revival>.)